APPEAL NO. 93459

Pursuant to the Texas Workers' Compensation Act, TEX. REV. CIV. STAT. ANN. art 8308-1.01 *et seq*. (Vernon Supp. 1993) (1989 Act), a contested case hearing was held in (city), Texas, on May 18, 1993, (hearing officer) presiding as hearing officer. He determined that the respondent (claimant) reached maximum medical improvement (MMI) on January 5, 1993 with a 21% impairment rating. Appellant (carrier) urges error in that the great weight of the other medical evidence which showed earlier MMI dates and lower impairment ratings by two doctors that treated the claimant overcame the presumptive weight of the designated doctor' report. Carrier also claims error on the part of the designated doctor in not correctly following the Guides to the Evaluation of Permanent Impairment, Third Edition, American Medical Association (AMA Guides) and urges that his report be ignored and another rating be adopted. Claimant asks that the hearing officer's decision be affirmed.

DECISION

Finding error in the findings and conclusions of the hearing officer, the decision is reversed and remanded.

The only issues in this case involved whether and when the claimant reached MMI and his correct impairment rating. The claimant sustained a compensable back injury on (date of injury), subsequently had back surgery and underwent therapeutic programs. According to his testimony, he became somewhat dissatisfied with the results of the ongoing treatment of his original treating doctor, (Dr. L), and selected another treating doctor, (Dr. S), with the assistance of an attorney. Dr. L certified that the claimant reached MMI on July 20, 1992, with an impairment rating of 12%. Dr. S certified that the claimant reached MMI on November 5, 1992, with an 11% impairment rating. The claimant disagreed with the impairment ratings of Dr. L and Dr. S (there was also evidence that the carrier may not have accepted any rating from Dr. S). We have held that a claimant can dispute the treating doctor's assessment of MMI and impairment rating. Texas Workers' Compensation Commission Appeal No. 92392, decided September 21, 1992. The Commission designated a doctor, (Dr. B), to examine the claimant and render a report on MMI and an impairment rating. Although the appointment was originally scheduled for late November, because of a missing record the designated doctor would not undertake the examination and rescheduled it for January 5, 1993. Dr. B subsequently certified MMI on January 5, 1993, and assessed a 21% impairment rating with a report attached to explain his medical opinion and detail how he arrived at the impairment rating including use of "combined tables." Carrier offered into evidence photo copies of the pertinent parts of the AMA Guides, including the Combined Values Chart, and urged that using the figures set out by Dr. B, the impairment rating from Dr. B would have to be only 20% rather than 21%. Based on this, he urged at the hearing and again on appeal that the report be totally disregarded and that one of the other reports be adopted.

The hearing officer found that Dr. B "properly" certified MMI with a 21% impairment and that the great weight of the other medical evidence was not contrary to Dr. B's

certification. It is with the finding that Dr. B "properly" certified a 21% impairment rating and the conclusion that the claimant had a 21% impairment rating that we find it necessary to reverse and remand. The carrier set forth its position and produced copies of the pertinent part of the AMA Guides which clearly indicates the procedures were not accurately followed or some inadvertent mistake was made by the designated doctor in assessing a 21% whole body impairment rating. We agree with the carrier's position that given the designated doctor's 12% rating for the specific disorder (related to the spinal surgery) and the 9% rating for range of motion, the whole body impairment using the combined values table would be only 20%. The hearing officer does not address nor does he resolve this matter in his decision and should do so on this remand. We have previously held that a designated doctor may amend or correct mistakes or ambiguities in a report and that the hearing officer should resolve such problems if it can be readily accomplished. *See* Texas Workers' Compensation Commission Appeal No. 92595, decided December 21, 1992. We do not agree with nor find a solid basis for carrier's position that an ambiguity or mistake, if that is what occurred, results in the report being summarily tossed out requiring the adoption of another doctor's impairment rating.

Regarding the carrier's position that the great weight of the other medical evidence was contrary to that of the designated doctor, we would observe that this is basically a factual determination. Of course, the 1989 Act gives considerable deference to the report of the designated doctor, specifically according it presumptive weight. We have held repeatedly that no doctor under the 1989 Act is accorded the special, presumptive status as that given the designated doctor. *See* Texas Workers' Compensation Commission Appeal No. 92366, decide September 10, 1992. While there were certainly conflicting medical opinions as to MMI and impairment rating, the hearing officer, as the fact finder is the one who resolves such conflicts in the evidence. Article 8308-6.34(e) and (g); *See* Texas Workers' Compensation Commission Appeal No. 92234, decided August 13, 1992. Only were we to find, which we do not, that the determinations of the hearing officer on this matter were so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust would corrective action be warranted. Texas Workers' Compensation Commission Appeal No. 92232, decide July 20, 1992. This part of the hearing officer's decision is affirmed.

For the reasons set out above, the decision is reversed on the issue regarding the designated doctor's impairment rating. The case is remanded for further consideration and development of evidence on this matter as deemed necessary and appropriate by the hearing officer consistent with the opinion. A final decision has not been made in this case. However, since reversal and remand necessitate the issuance of a new decision and order by the hearing officer, a party who wishes to appeal from such new decision must file a request for review not later than 15 days after the date on which such new decision is received from the Texas Workers' Compensation Commission's division of hearings, pursuant to Article 8308-6.41. *See* Texas Workers' Compensation Commission Appeal

No. 92642, decided January 20, 1993.

Stark O. Sanders, Jr.
Chief Appeals Judge

CONCUR:

Joe Sebesta
Appeals Judge

Thomas A. Knapp
Appeals Judge